

**Staff
Summary
Report**



Council Meeting Date: 5-15-2008

Agenda Item Number: 41

SUBJECT: Request approval of a resolution authorizing the Mayor to execute a Development Agreement with Insight Direct Worldwide, Inc.

DOCUMENT NAME: 20080515cdssw01 **COMMUNITY DEVELOPMENT/REDEVELOPMENT ADM (0403-01)**
RESOLUTION NO. 2008.40

SUPPORTING DOCS: Yes

COMMENTS: The attached Development Agreement finalizes the details of the Insight corporate expansion project in Tempe.

PREPARED BY: Sheri Wakefield-Saenz, Deputy Manager, Community Development (Ext. 8812)

REVIEWED BY: Chris Salomone, Community Development Manager (Ext. 8249)

LEGAL REVIEW BY: Andrew Ching, City Attorney (Ext. 8120)

FISCAL NOTE: N/A

RECOMMENDATION: Authorize the Mayor to execute the Insight Development Agreement.

ADDITIONAL INFO: N/A

RESOLUTION NO. 2008.40

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TEMPE AND INSIGHT DIRECT WORLDWIDE, INC., AN ARIZONA CORPORATION.

WHEREAS, Insight Direct Worldwide, Inc. ("Insight") desires to relocate a portion of its corporate headquarters to certain property in Tempe, Arizona (the "Project"); and

WHEREAS, City and Insight desire to enter a Development Agreement to set forth their agreements regarding the Project, and such other related matters as they deem appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor or his designee be and hereby is authorized to execute the Development Agreement and other documents referenced therein, copies of which are on file with the City Clerk's office and to take such further actions as are necessary to implement its terms.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

Hugh L. Hallman, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEVELOPMENT AGREEMENT

No. C07 _____

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 2008, between the City of Tempe, an Arizona municipal corporation (the "City"), and Insight Direct Worldwide, Inc., an Arizona corporation ("Insight").

R E C I T A L S

WHEREAS, Insight desires to locate a portion of its corporate headquarters (the "Project") to a building located on the real property more particularly described on Exhibit A hereto (the "Property") in Tempe, Arizona known as 910 W. Carver Road (the "Building"); and

WHEREAS, significant constraints exist on the Property which make the development of the Project infeasible without relief from City development standards; and

WHEREAS, the City and Insight hereby acknowledge and agree that significant benefits will accrue to the City from the ultimate development of the Project by Insight, including a capital investment of at least \$4 million, the addition of 375 new administrative jobs within the City, and other tangible and intangible, direct and indirect, benefits to the City and its citizenry. This Agreement is a development agreement pursuant to the provisions of A.R.S. §900.05.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto state, confirm and agree as follows:

A G R E E M E N T

1. Definitions. The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

1.1 "City" shall mean the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.2 "Insight" shall mean Insight Direct Worldwide, Inc., an Arizona corporation.

1.3 "Parties" and "Party" shall mean all of the parties to this Agreement collectively or each of the parties individually, as the context may require.

1.4 "Project" shall mean the relocation of a portion of Insight's corporation headquarters to the Property with at least a \$4 million dollar capital investment and the creation

of 375 new administrative jobs at an average salary of \$50,000 per year within one (1) year after the relocation.

1.5 "Property" shall mean the real property depicted in **Exhibit A**.

2. Development Issues.

2.1 Duration of Development Agreement. The term of this Agreement shall commence on the date it is executed by all of the Parties and continue for a period of ten (10) years, unless sooner terminated as provided herein.

2.2 Completion of Project. Insight shall complete the relocation of a portion of its headquarters within six (6) months after the date this Agreement is executed and shall complete the balance of the Project no later than twelve months after the date this Agreement is executed. Insight shall submit to City within one year of the date of execution of this Agreement, a compliance certificate executed by its Chief Financial Officer attesting to completion of the Project, confirming the number of persons then employed at the Project and their salary levels. Insight shall notify City within thirty (30) days after Insight ceases to employ at the headquarters office located on the Property, 375 administrative employees having an average salary of \$50,000 per year.

2.3 Artistic Display Panels. In consideration of Insight's completion of the Project, City hereby agrees that Insight or its designee may construct, install, maintain, renovate, repair, rebuild and lease (to third parties for profit) two two-faced artistic display panels (the "Panels") on the real property (the "Panel Property") identified and at the locations identified on the conceptual plan and attached hereto as Exhibit B. The Panels shall not exceed 55' in height (measured from the average road grade level to the top of the Panel), and their dimension shall not exceed 14' x 48'.

2.3.1 The Panels may remain on the Panel Property for a period of 10 years from the date this Agreement is executed (the "Term"), subject to extension on terms mutually acceptable to City and Insight. Insight may request an extension of the Term by submitting a written request to City not later than 360 days prior to the end of the Term, which written notice shall contain a statement of proposed terms. The parties shall thereafter negotiate in good faith to reach mutual agreement on the terms of the extension, failing which this Agreement shall terminate as scheduled, and Insight shall remove the Panels within 60 days.

2.3.2 The Panels may only be used for graphic display of information or products that are consistent with the community and moral standards of the City. Insight agrees to request that the contractor responsible for marketing the panels use its best efforts to display its own products or products of its corporate partners prior to using the Panels for graphic display of information or products of any other entities.

2.3.3 The Panels shall be consistent from a design standpoint with City standards, and the final location and design of the Panels shall be reviewed and approved in writing by the City Architect prior to their construction and installation on the Panel Property. If Insight fails to obtain such approval, City shall have the right to cause the Panels to be removed

at Insight's expense. The City Architect shall not unreasonably withhold such review and/or approval.

2.3.4 Insight shall comply with all laws, rules and regulations applicable to the Panels, including without limitation those imposed by the Arizona Department of Transportation.

2.4 General Cooperation. City and Insight acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to pursue the Project as contemplated by this Agreement. City agrees to use its reasonable best efforts to assist Insight or its affiliates with other governmental agencies as appropriate including the State of Arizona Department of Commerce.

3. Cooperation. To further the commitment of the parties to cooperate in the implementation of this Agreement, the City and Insight shall each designate and appoint a representative to act as liaison between the City and its various departments and Insight. Insight hereby designates its Chief Marketing Officer as its representative, and the City hereby designates the Director or Deputy Director of Economic Development or her designee as its representative. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the progress of the development.

4. Annual Corporate Charitable Contributions. Insight desires to further the City's social service and community development efforts by making an annual contribution of not less than \$20,000 to the City of Tempe for use by Tempe United Way agencies during the term of this Agreement on each anniversary of the date of execution of this Agreement.

5. Indemnification of City. Insight shall indemnify, protect, defend and hold harmless the City, its council members, officers, employees and agents, from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and clean-up actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, arising directly or indirectly, in whole or in part, out of the performance of this Agreement by Insight, except to the extent resulting from the negligence or intentional misconduct of the City or any of its employees, contractors or agents.

6. Default; Remedies; Termination.

6.1 Default. It shall be a default hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within the thirty-day period, no default shall be deemed to exist if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion.

6.1.1 Additional Defaults. In addition to the foregoing, it shall be a default hereunder if: (a) Insight ceases to operate the Project within the parameters established in this Agreement without the prior written consent of City, which consent may be granted or withheld in City's unfettered discretion; (b) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "Bankruptcy Code") or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Insight or any partnership of which it is a partner, their respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (c) Insight makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (d) a custodian, as defined by the Bankruptcy Code, takes charge of any property of Insight or any property of any partnership of which it is a partner; (e) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Insight, or any partnership of which it is a partner, and such issuance is not bonded against within ninety (90) days; (f) the dissolution or termination of existence of Insight or the sale of all or substantially all of the assets or stock of Insight, unless its obligations hereunder have been assumed by an entity whose financial capacity has been approved in advance by City (such approval not to be unreasonably withheld or delayed); or (g) there is a material default or material breach of any representation, warranty or covenant, or there is a material false statement or material omission, by Insight under any other document forming part of the transaction in respect of which this Agreement is made.

6.2 City's Remedies; Right to Terminate Agreement. If, after the passage of any applicable cure period, Insight remains in default under this Agreement, then the City shall have the right and option, without obligation, to (a) terminate this Agreement immediately upon written notice to the Insight, in which event Insight shall remove the Panels within 60 days after termination, and (b) exercise such other remedies as are available at law or in equity for breach of contract. On any such termination, this Agreement shall be of no further force or effect other than the indemnification provisions which shall survive the expiration or termination of this Agreement, and Insight shall be relieved of any obligation to make further payments under Section and indemnities City and Insight shall be relieved of its obligations under Section 4.

6.3 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, Insight shall have all customary rights to develop the Property. However, future uses and development occurring on the Property shall be subject to all of the City's applicable development standards and review processes, and termination shall constitute the immediate revocation of the privileges and rights granted under Sections 2 and 3 hereof, and Insight shall remove the Panels within 60 days after termination or expiration of this Agreement.

6.4 Developer's Remedies. If the City is in default under this Agreement and the parties do not resolve the City's default pursuant to the nonbinding mediation described in this Agreement, Insight shall have the right to terminate this Agreement upon written notice to the City. Within 60 days after any such termination, Insight shall remove the Panels.

7. General Provisions.

7.1 Notices. All Notices which shall or may be given pursuant to this Agreement shall be in writing and may be given in person or transmitted by registered or certified mail, return receipt requested, addressed as follows:

TO Insight

With a copy to:

TO THE CITY:

City Manager
City of Tempe
P. O. Box 5002
31 East 5th Street
Tempe, Arizona 85281

With a copy to:

City Attorney
Tempe City Attorney's Office
P. O. Box 5002
21 E. Sixth Street, Suite 201
Tempe, Arizona 85281

Any Party hereto shall have the right to change its designated notice address by providing to the other Parties written notice of such change in the manner described above.

7.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Insight and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and Insight shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Insight. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

7.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

7.4 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

7.5 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

7.6 Attorneys' Fees. In the event of any litigation between the parties in connection with this Agreement, excluding the mediation process pursuant to section 7.2, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

7.7 Severability; No Merger. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, to the extent the material provisions of this agreement are not vitiated.

7.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

7.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

7.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

7.11 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

7.12 No Partnership or Joint Venture. Under no circumstances shall the parties hereto be considered partners or joint venturers.

7.13 Conflict. This Agreement is subject to cancellation per ARS 38-511.

7.14 In the event that City or Insight shall be delayed, hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

IN WITNESS WHEREOF, the undersigned have caused this Development Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

City Clerk

By _____
Hugh Hallman, Mayor

APPROVED AS TO FORM:

City Attorney

Insight Direct Worldwide, Inc., an Arizona corporation

By _____
Name _____
Title _____

List of Exhibits

Exhibit A	Legal Description of Project Property
Exhibit B	Conceptual Site Plan and Description of Panel Property

ALL BUILDING ONLY

PACKAGE
LOCATION.
UNDER THIS
INKLER SYSTEM
SPARKING OF
FED AND APPROVED
ATE OF OCCUPANCY."

PROJECT DATA - BUILDING C

TOTAL SITE AREA
7.23 ACRES
315,016 SF

BUILDING AREA:
OFFICE 20,000 SF
MANUFACTURING 40,000 SF
WAREHOUSE 40,103 SF
TOTAL 100,103 SF

COVERAGE 51.77 %

PARKING REQUIRED:
OFFICE (20,000 SF @ 1500 SF) 13 STALLS
MANUFACTURING (40,000 SF @ 1500 SF) 27 STALLS
WAREHOUSE (40,103 SF @ 1500 SF) 27 STALLS
TOTAL 67 STALLS

PARKING PROVIDED:
BICYCLE PARKING REQUIRED:
OFFICE (20% @ 1500 SF) 3 BIKES
MANUFACTURING (40% @ 15000 SF) 9 BIKES
WAREHOUSE (40% @ 15000 SF) 9 BIKES
TOTAL 21 BIKES

BICYCLE PARKING PROVIDED:
LANDSCAPE AREA PROVIDED:
25 BIKES
63,169 SF
OR 20.05 %

VICI

ZONING: SOUTHWEST OVERLAY DISTRICT
1988 UBC

UNIFORM BUILDING CODE:
OCCUPANT: B2 / OFFICE / WAREHOUSE
CONSTRUCTION TYPE: TYPE III-N
SPRINKLERED: FULLY

AREA JUSTIFICATION CALCULATIONS:
BASE ALLOWABLE: 12,000 SF
FULLY SPRINKLERED X 3: 36,000 SF
4 SIDEYARDS AT 60' X 0": UNLIMITED AREA

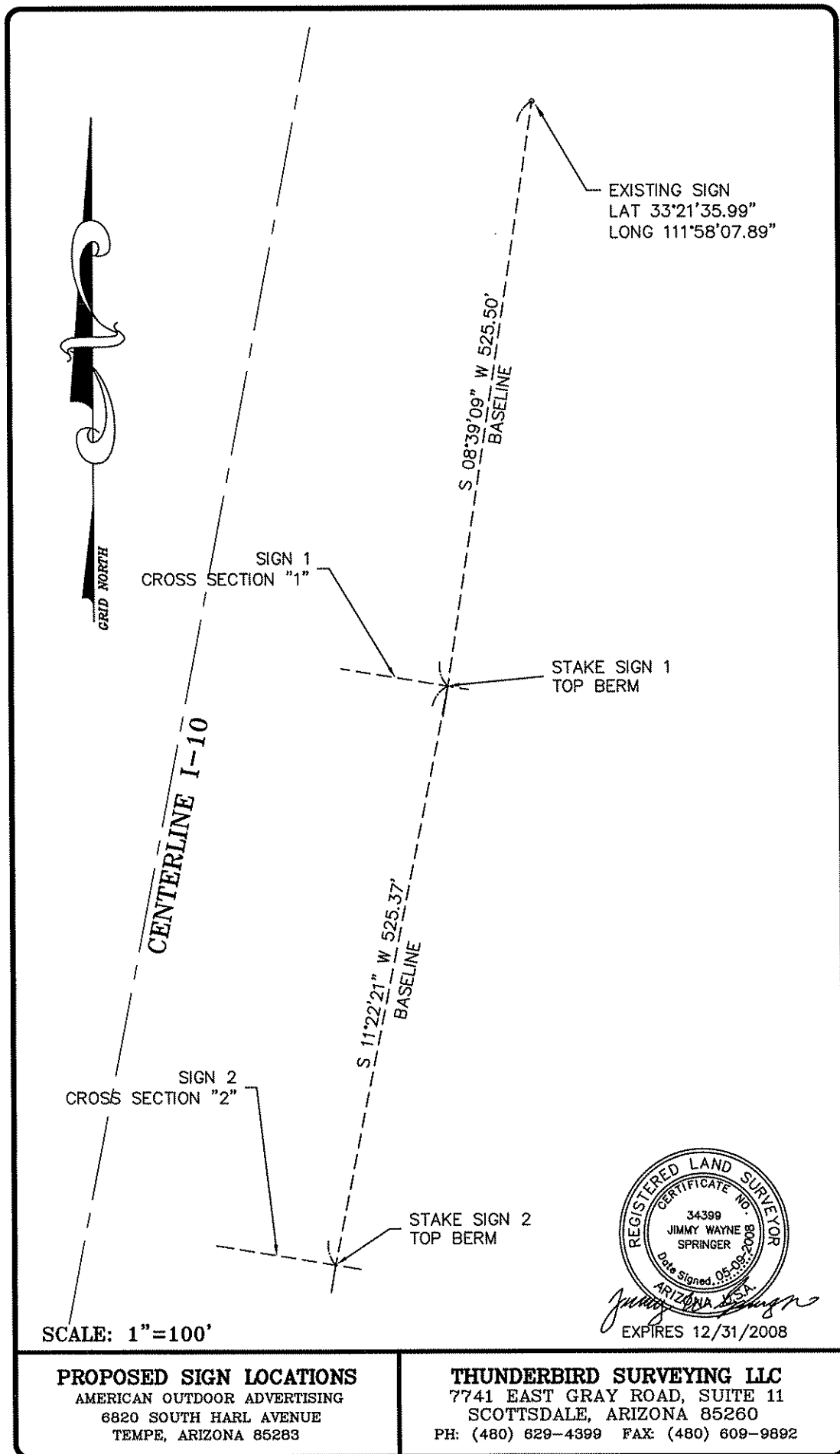
ESFR SPRINKLER SYSTEM

REFERENCE REVIEW NUMBERS
CITY OF TEMPE DESIGN REVIEW BOARD # DRB97122
CITY OF TEMPE PLAN CHECK # AD97-0974

LEGAL DESCRIPTION

THE WEST 231 FEET OF THE FOLLOWING DESCRIBED LAND: A PARCEL OF LAND LYING WITHIN SECTION 16, TOWNSHIP 1 SOUTH, RANGE 4 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 16; THENCE ALONG THE WEST LINE OF NORTHEAST QUARTER OF SAID SECTION 16 AND THE MONUMENT LINE OF HARDY DRIVE, SOUTH 00 DEGREES 26 MINUTES 03 SECONDS EAST, A DISTANCE OF 1548.00 FEET; THENCE LEAVING SAID WEST LINE, NORTH 89 DEGREES 55 MINUTES 57 SECONDS EAST, A DISTANCE OF 40.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF HARDY DRIVE AND THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 40 MINUTES 47 SECONDS EAST, A DISTANCE OF 1833.27 FEET TO THE BEGINNING OF THE CURVE; THENCE EASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 332.24 FEET, CONCAVE NORTHERLY THROUGH A CENTRAL ANGLE OF 27 DEGREES 07 MINUTES 23 SECONDS, A DISTANCE OF 180.95 FEET TO THE CURVE'S END; THENCE NORTH 63 DEGREES 33 MINUTES 24 SECONDS EAST, A DISTANCE OF 63.61 FEET; THENCE NORTH 60 DEGREES 45 MINUTES 23 SECONDS EAST, A DISTANCE OF 29.93 FEET TO THE BEGINNING OF A NON-TANGENT CURVE; THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 332.24 FEET, CONCAVE NORTHEASTERLY, WHOSE RADIUS BEARS NORTH 28 DEGREES 42 MINUTES 53 SECONDS WEST, THROUGH A CENTRAL ANGLE OF 04 DEGREES 40 MINUTES 27 SECONDS, A DISTANCE OF 314.13 FEET; TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE AND THE WEST LINE OF THE ARIZONA EASTERN RAILWAY COMPANY (SOUTHERN PACIFIC RAILROAD), AS CREATED BY THE 43 U.S.C.A. 307-ACT MARCH 3, 1975; THENCE ALONG SAID WEST LINE, SOUTH 13 DEGREES 34 MINUTES 26 SECONDS WEST, A DISTANCE OF 1214.25 FEET TO THE NORTH LINE OF THE SOUTH 40 NORTH LINE, NORTH 00 DEGREES 26 MINUTES 03 SECONDS WEST, A DISTANCE OF 417.00 FEET; THENCE SOUTH 39 DEGREES 41 MINUTES 16 SECONDS WEST, A DISTANCE OF 1406.38 FEET; THENCE LEAVING SAID NORTH LINE, NORTH 00 DEGREES 26 MINUTES 03 SECONDS WEST, A DISTANCE OF 208.00 FEET; THENCE SOUTH 39 DEGREES 41 MINUTES 16 SECONDS WEST, A DISTANCE OF 266.00 FEET TO SAID EAST RIGHT-OF-WAY LINE OF HARDY DRIVE; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE, NORTH 00 DEGREES 26 MINUTES 03 SECONDS WEST, A DISTANCE OF 440.16 FEET, TO THE POINT OF BEGINNING.



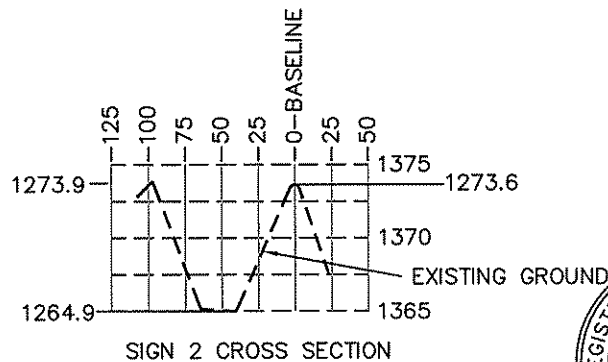
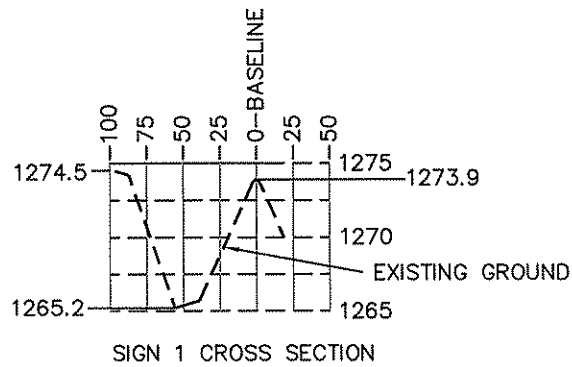
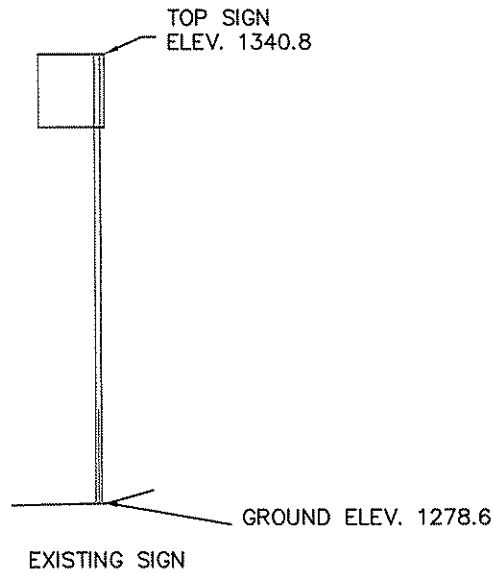
PROPOSED SIGN LOCATIONS

AMERICAN OUTDOOR ADVERTISING
6820 SOUTH HARL AVENUE
TEMPE, ARIZONA 85283

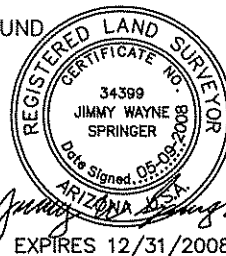
THUNDERBIRD SURVEYING LLC

7741 EAST GRAY ROAD, SUITE 11
SCOTTSDALE, ARIZONA 85260
PH: (480) 629-4399 FAX: (480) 609-9892

BENCHMARK - BRASS CAP IN
HANDHOLE, 56TH STREET &
WESTERN CANAL, CITY OF TEMPE
#243, ELEV. = 1245.16



SCALE:
VERTICAL 1"=10'
HORIZONTAL 1"=100'



PROPOSED SIGN LOCATIONS
AMERICAN OUTDOOR ADVERTISING
6820 SOUTH HARL AVENUE
TEMPE, ARIZONA 85283

THUNDERBIRD SURVEYING LLC
7741 EAST GRAY ROAD, SUITE 11
SCOTTSDALE, ARIZONA 85260
PH: (480) 629-4399 FAX: (480) 609-9892



TODD LAWRENCE
ARCHITECT
703 E. AUBURN DR.
TEMPE, AZ. 85283
(602) 768-5069

AMERICAN
OUTDOOR
BILLBOARD
CONCEPT 3
SCALE 1/16" = 1'-0"
04/20/08

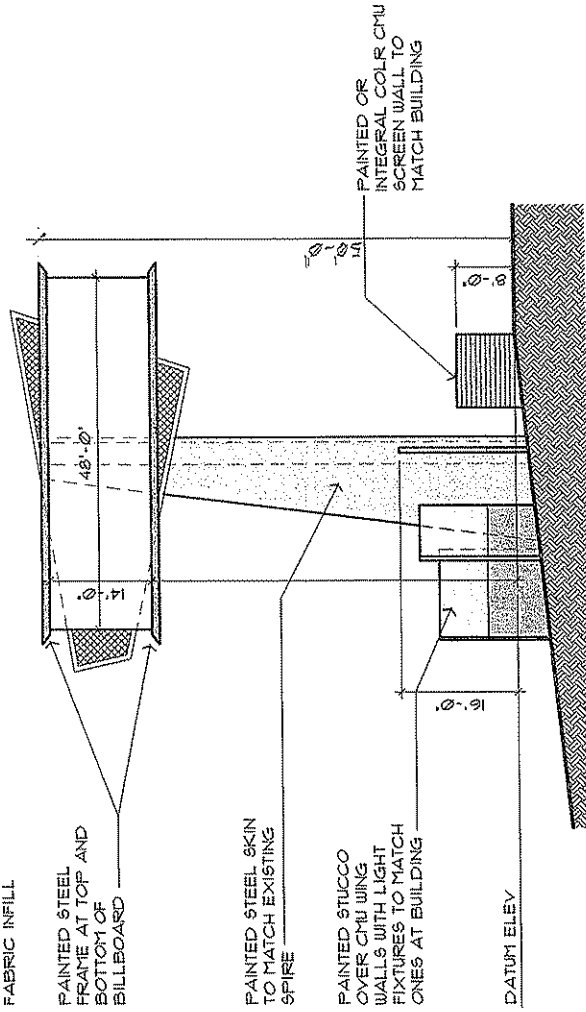
PAINTED STEEL
FRAME WITH
PERFORATED PANEL
OR WOVEN WIRE
FABRIC INFILL

PAINTED STEEL
FRAME AT TOP AND
BOTTOM OF
BILLBOARD

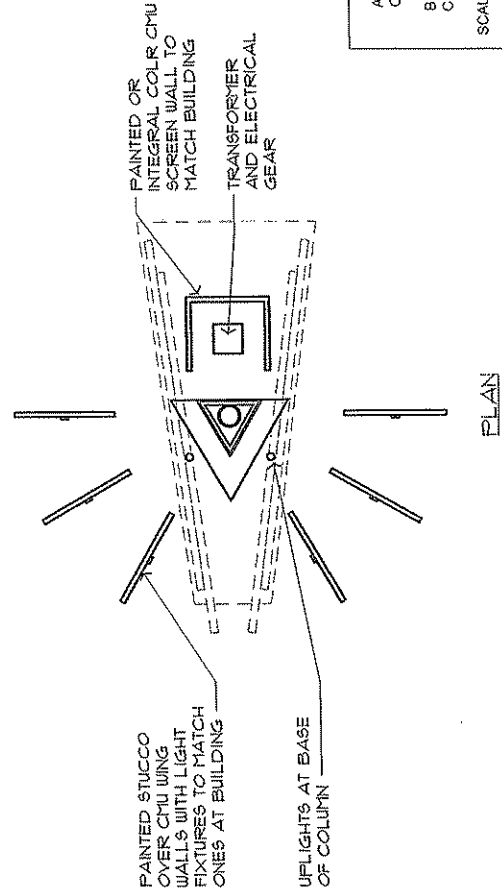
PAINTED STEEL SKIN
TO MATCH EXISTING
SPIRE

PAINTED STUCCO
OVER CMU WING
WALLS WITH LIGHT
FIXTURES TO MATCH
ONES AT BUILDING

DATUM ELEV



ELEVATION



PLAN